

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BITUMINOUS CASUALTY	)	4:06CV3128
CORPORATION,	)	
	)	
Plaintiff,	)	<b>MEMORANDUM</b>
vs.	)	<b>AND ORDER</b>
	)	
AARON FERER AND SONS	)	
COMPANY; THE UNITED STATES	)	
ENVIRONMENTAL PROTECTION	)	
AGENCY/JOHN B. ASKEW,	)	
REGION 7 ADMINISTRATOR; and	)	
UNION PACIFIC RAILROAD	)	
COMPANY,	)	
	)	
Defendants.	)	

Bituminous Casualty Corporation (“Bituminous”) seeks a declaratory judgment that it has no obligation to defend or indemnify its insured, Aaron Ferer and Sons Company, regarding what is known as the Omaha Lead Superfund Site. The United States Environmental Protection Agency and its Region 7 Administrator, John B. Askew<sup>1</sup> (collectively “USEPA”), request to be dismissed from the action because of (1) Eleventh Amendment immunity and (2) the jurisdictional bar of CERCLA section 113(h), 42 U.S.C. § 9613(h). Bituminous states that it does not oppose the dismissal “[g]iven that USEPA has elected to rely upon its sovereign immunity.” (Filing 34.)

Accordingly,

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<sup>1</sup> John B. Askew, in his official capacity, is substituted for the original named defendant, James B. Gulliford, pursuant to Federal Rule of Civil Procedure 25(d)(1).

IT IS ORDERED that:

1. Filing 27, a motion to dismiss filed by the defendants United States Environmental Protection Agency and John B. Askew, Region 7 Administrator, is granted on Eleventh Amendment immunity grounds.
2. There being no just reason for delay, a final judgment shall be entered pursuant to Federal Rule of Civil Procedure 54(b).

November 2, 2006.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge